

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

OKLAHOMA FARM BUREAU MUTUAL)	
INSURANCE COMPANY AS)	Case No. Civ-22-18-D
SUBROGEE OF MICHAEL DIEL)	
)	
Plaintiffs,)	Removed from the District Court
)	Garfield County, Oklahoma
v.)	Case No. CJ-2021-254-02
)	
OMEGA FLEX, INC.)	
)	
Defendant.)	

**DEFENDANT’S MEMORANDUM OF LAW IN RESPONSE TO PLAINTIFF’S
MOTION FOR LEAVE TO AMEND FINAL EXHIBIT LIST AND WITNESS LIST**

Plaintiff’s request to file an amended Final Exhibit List and Witness List [Doc. No. 43] should be denied as moot because Defendant Omega Flex, Inc. (“Omega Flex”) is entitled to summary judgment. *See* Doc. No. 44. If this case survives summary judgment, Omega Flex does not oppose the concept of Plaintiff then having an opportunity to amend its Final Exhibit List and Witness list to account for rulings on summary judgment, spoliation, and Rule 702 motions, but only if (1) if the Amended Final Exhibit List and Amended Final Witness List are compliant with Fed. R. Civ. P. 26, and (2) if the parties’ new deadlines for submitting amended lists are consistent with the timeframe in the prior Scheduling Order. Omega Flex opposes Plaintiff’s current request for leave to file an amended Final Exhibit List and Witness List because those requests do not attach proposed amended lists.

If potential amended lists do not resolve the issues raised in Omega Flex’s Motion to Strike Plaintiff’s Final Exhibit List and Final Witness List [Doc. No. 26], Omega Flex and the Court would be left in the same place—without knowing with any certainty what is actually included in Plaintiff’s proposed Exhibits, what is their Rule 26 purpose, or whether Plaintiff’s

witnesses are expected live or by deposition. Accordingly, the Court should deny the Plaintiff's present motion.

If there is a reason for the Court to consider allowing Plaintiff to file amended lists, Omega Flex requests that the Court order Plaintiff to re-file a motion for leave *with its proposed amendments* so their Rule 26 compliance can be ascertained efficiently. Alternatively, Omega Flex requests that any Order granting leave instruct Plaintiff that its amended lists must be fully compliant with Rule 26 or they will be stricken and any of its exhibits and witnesses will be precluded.

CONCLUSION

WHEREFORE, for the reasons stated herein, this Court should deny Plaintiffs' Motion for Leave to Amend Final Exhibit List and Witness list, and Order such and further relief and the Court deems necessary.

Dated: August 4, 2023

Respectfully submitted,

THE DEFENDANT,
OMEGA FLEX, INC.

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CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2023, a copy of the foregoing document was filed electronically with the Clerk of the Court using the Court's CM/ECF electronic filing system, which will send an electronic copy of this filing to all counsel of record.

Via Eservice

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By: /s/ Adam M. Masin

Adam M. Masin